SUPREME COURT, U. S.

No. 224

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In the Supreme Court of the United States

OCTOBER TERM, 1968

J. P. STEVENS & CO., INC., PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-23a) is reported at 388 F. 2d 896. The Board's decision and order (Pet. App. 34a-84a; J.A. 12-163)[1] are reported at 163 NLRB No. 24.

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[1] "J.A." refers to the Joint Appendix in the court below. "Tr." refers to the transcript of testimony in the Board proceeding; "G.C.X." refers to the General Counsel's exhibits; and "R.X." to those of the Company.

JURISDICTION

The decree of the court of appeals was entered March 26, 1968 (Pet. App. 24a-33a). The petition for a writ of certiorari was filed on June 24, 1968. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether substantial evidence supports the Board's findings that the employer violated the National Labor Relations Act by discharging 18 employees because of their union activities or because they had testified adversely to the employer in a prior Board proceeding, and by denying overtime to two other employees for similar reasons.

2. Whether, as a remedy for the extensive unfair labor practices in this case, it was reasonable for the Board to require the employer (a) to post an appropriate notice in all its plants in North and South Carolina and to mail a copy thereof to each employee at these plants, (b) to read or permit the notice to be read to the employees at those plants where the unfair labor practices were actually committed, and (c) to grant the union, upon its request, reasonable access to the employer's bulletin boards for a period of one year.

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151 *et seq.*) are set forth in the Appendix, *infra*, pp. 25-26.

STATEMENT

A. The Board's Findings of Fact

1. *Background: The Company's unfair labor practice campaign; the first Stevens case*

In May 1963, the Union[2] undertook a concerted organizing campaign in approximately half of the Company's 43 textile plants in North and South Carolina. In *J. P. Stevens & Co., Inc.*, 157 NLRB 869 (hereafter "*Stevens I*"), enforced with minor modifications, 380 F. 2d 292 (C.A. 2), certiorari denied, 389 U.S. 1005, the Board found that the Company countered by committing "massive and deliberate unfair labor practices" (157 NLRB at 878). Thus, the Company repeatedly violated Section 8(a)(1) of the Act by threats of reprisals, promises of benefit, coercive interrogation, surveillance, and other unlawful interference (*id.* at 870-871; 380 F. 2d 296, 301). In addition, it discharged 71 employees and deprived two others of overtime work, as a reprisal for their union and protected activity, in violation of Section 8(a)(3), (4) and (1) of the Act (157 NLRB at 872-877, 887-958; 380 F. 2d at 301). Upon reviewing the Board's findings in *Stevens I*, the Second Circuit held that there was ample support for the Board's ultimate conclusion that (380 F. 2d at 301, quoting from 157 NLRB at 965-966):

> [The Company], through its plant superintendents, acting in collaboration, initiated and pursued a pattern of conduct the purpose of which

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[2] Textile Workers Union of America, AFL-CIO.

was to crush the union movement. With scant regard for the means employed other than their effectiveness, it interfered with, restrained and coerced its employees in the exercise of their rights under the Act, flagrantly, cynically, and unlawfully.

2. ***The instant case: The Company's continued illegal activity***

During the course of the proceedings in *Stevens I*, March to September 1964, the Company continued to discharge employees, and further unfair labor practice charges were filed (J.A. 64). Some of these charges, together with additional charges alleging further discharges and other acts of restraint and coercion in the period September 1964 through May 1965, form the basis for the complaint in the present case (J.A. 64).

Thus, during the pertinent period the Company, *inter alia*, discharged 18 employees and deprived two employees of overtime work. The Board found that this action was taken because these employees had actively supported the Union or had testified adversely to the Company in *Stevens I*. As in the Board's brief in opposition in *Stevens I*, No. 684, 1967 Term, we will not at this stage of the proceedings undertake to detail all of the evidence submitted at the lengthy Board hearings that supports the Board's findings as to each of the employees involved.[3] Instead, a summary of the evidence concerning certain of these employees, illustrating the manner in which the Com-

[3] The evidentiary findings relating to each of these employees are set out at J.A. 16-40, 63-148.

pany dealt with those who chose to support the Union or testify against the Company, would seem sufficient to demonstrate why plenary review of the substantiality of the evidence is not warranted in the instant case.

a. Republic plant No. 3. *Ben Suratt*, a warp service hand in the weave room, joined the Union in August 1963, at which time the Company posted his name on the department bulletin board (J.A. 66; Tr. 79; 157 NLRB at 895, 896).[4] On August 24, the day following the discriminatory discharge of employee Walden, Suratt, together with employees Hyatt and Price, who also worked on Walden's shift and whose names also had been posted, went to the office of Superintendent Melvin Smith (J.A. 66; 157 NLRB at 896). The three employees told Smith and Leland Burns, assistant manager of all Rock Hill area plants, that they wanted to get out of the Union and would like their names removed from the posted list (J.A. 66; 157 NLRB at 896). Burns and Smith proceeded, in violation of Section 8(a)(1), to ask about the union membership of other employees, to comment adversely on the union activities of still others including the discharged Walden (characterized as a "damned ringleader"), and to suggest that joining the Union could lead to losing one's job. Burns told the three men that they could help themselves by getting out of the Union, and said that, while he was not going to

[4] It was the Company's practice to post on its bulletin boards the names of the employees who had joined the Union. As employees withdrew from the Union, their names were crossed off the lists (Pet. App. 3a).

require them "to sign anything," they would have to "prove" themselves and watch the company they kept. Burns added that he could not promise them anything, and that, if they ever decided to get back in the Union, they were to "come to me and let me know first" (J.A. 68; 157 NLRB at 896-897).

On March 25, 1964, Suratt, Hyatt, and Price testified to the above incident at the hearing in *Stevens I* (J.A. 66-67). Thereafter, Carter, their general overseer, "went to watching [the three men] pretty close" (Tr. 80, 299). Moreover, at this time, Suratt's and Hyatt's enthusiasm for the Union rekindled, and they began wearing union buttons and T-shirts at work (J.A. 68; Tr. 84-85).

On July 22, Suratt and Hyatt, who worked together as a team, were making a repair on a warp together with Plyler, another service man, when the latter two were taken off the job and assigned to other work (J.A. 68; Tr. 79, 374-375, 86-91, 150-154, 400). Left to make the repair by himself, though he was the least experienced of the three, Suratt took about two hours to do the job (J.A. 68; Tr. 88-89, 154, 346). The next day, Carter, advised by Suratt's immediate supervisor that this was too long, signed a personnel action report on Suratt (J.A. 32, n. 12, 68; R.X. 12, Tr. 385, 158-160). Two nights later, Suratt made another repair that took about two hours (J.A. 68; Tr. 92-93, 147, 376). As he worked, Supervisors Brannon and Dixon stood nearby "laughing and looking at Suratt" (Tr. 92). On completing the job, Suratt went on to other work (J.A. 68; Tr. 380). However, Brannon went to the loom, cut the piece of cloth

out in order to count the thread ends, and allegedly thus "found out for sure" that Suratt had taken too long to make the repair (J.A. 68-69; Tr. 383-384). Brannon reported his conclusion to Dixon, who adopted his recommendation that Suratt be fired (J.A. 69; Tr. 381, 383, 395-396).

While Brannon claimed that two hours was excessive for the repair that assertedly precipitated Suratt's discharge, he was contradicted by employees Hubert Varnadore and Elbert Lyles. Both of these men had experience as service hands, both observed the break-out, and both estimated that an experienced service man would take between two and three hours to make the repair (Tr. 410-417). Brannon could not recall any previous occasion when he had cut off cloth to ascertain whether an employee had taken too long at a repair (J.A. 69; Tr. 384), nor does it appear that any employee had ever before been dismissed for this reason. Suratt's replacement, Supervisor Dixon's son, was a learner or trainee (Tr. 145-146).[5]

Hubert Varnadore, a weaver, had received no written reprimands or write-ups during his ten years with the Company prior to his announced affiliation with the Union (J.A. 72; 103-105). On August 29, 1963, two weeks after his Union membership was posted, he received a write-up for "mixing filling"; another one for the same thing on March 30, 1964, while he was under subpoena as a witness in *Stevens I* and the day before he testified; a third for running a "wrong

[5] Hyatt voluntarily quit the Company's employ a week or two after Suratt's discharge (J.A. 67; Tr. 94).

colored end," on April 16, 1964; and a fourth for "poor inspecting," on November 11, 1964 (J.A. 72-73; Tr. 331-333, 362-364, 157 NLRB at 904, R.X. 3-6). Moreover, during July 1964, Varnadore, along with Suratt and a few others (*supra*, p. 6), began wearing union buttons and T-shirts in the plant (J.A. 73; Tr. 111, 84-85). One night Overseer Carter told Varnadore that he would "have to go home and take the shirt off" (J.A. 73; Tr. 112). Carter's only explanation, offered at the Board hearing, was that the T-shirt would "attract attention" (J.A. 73; Tr. 302-303).

When Varnadore reported to work at midnight on March 16, 1965, Supervisor Brannon took him to Overseer Carter's office to see a roll of cloth containing a running defect, and then sent him home with instructions to see Carter in the morning (J.A. 73-74, 13, n. 2; Tr. 116-119, 362-364, 308). The next morning, Carter discharged Varnadore (J.A. 72, 13, n. 2; Tr. 121-125, 308-309). Carter's explanation for this action—that Varnadore was responsible for the flawed cloth—was discredited by the Trial Examiner (J.A. 75-177). The Examiner was "not persuaded that the cloth * * * in fact came from one of Varnadore's looms" (J.A. 75-76, 73-74; Tr. 307-308, 315-317). Neither Varnadore nor Brannon was shown the cloth before it was removed from the loom (J.A. 75; Tr. 307-308, 320-321, 352-353). The weaver who (according to Carter) discovered the defect while the cloth was on the loom was not called to testify, nor was Carter's assistant, who assertedly called the matter to Carter's attention (J.A. 75; Tr. 306-308, 316-317). On the other hand,

Varnadore testified that he did not know from whose loom the cloth had come, and that he did not see his name on it, although the weaver is required to write his name on his cloth (J.A. 75, 76, n. 18; Tr. 127-130). Carter could not recall any weaver whom he had previously discharged (J.A. 77; Tr. 323), and, although admitting that the loom fixer is responsible along with the weaver for the defect attributed to Varnadore, testified that Varnadore's fixer, Greene, was not discharged nor even given a write-up (J.A. 74-75, 76; Tr. 316, 318-319).[6]

b. The Dunean plant. *Oliver Durham* was a cloth doffer in the Dunean weave room (J.A. 84; Tr. 921). In August and September 1964, his name, having appeared on union leaflets as a member of the organizing committee, was posted by the Company on the bulletin board (J.A. 84; Tr. 921, 922, 949, 1545). After the Union distributed a leaflet at the plant gate on September 9, Durham's supervisor, Cheek, took him to the bulletin board where the Company had posted a copy of the letter that Superintendent Pride had sent to members of the organizing committee (J.A. 85; Tr. 927, 922-923, 1540-1542, G.C.X. 5). The letter stated that the Company had learned from a union leaflet that the addressee was a member of the organizing committee at Dunean; that union activity "must not take place here in the plant on working

[6] In *Stevens I*, the Board found that Carter had attempted to induce a lower-level supervisor to falsify events with respect to the discriminatory discharge of employee Walden, to entrap discriminatee Jarvis Capps into misconduct, and to "frame" discriminatee William Varnadore for a dereliction he had not committed (157 NLRB at 896, 901-902, 899-900).

time"; and that the addressee would be subject to the "requirement" that "anybody who engaged in union organizing effort at this plant and who thereby neglects his work or interferes with the work of others will be subject to discharge from our employment" (J.A. 85-86; G.C.X. 5). Cheek asked whether Durham had received a like letter, told him to read it, and added that "from now on" he would "have to stay on [his] job, not be going to the water house, and not be talking to anyone on the job" (Tr. 923).

On the morning of September 10, late in the shift and after making sure that his work was "caught up real good," Durham went to the washroom to take a break (J.A. 87, 88; Tr. 927-928). This was not the men's washroom just off the weave room floor, but a washroom in the entrance to the warehouse, a three to five-minute walk away, which the Company had assigned to Durham and John Cobb, his fellow doffer, the two Negroes on the shift (J.A. 86; Tr. 928-929, 1533, 1546-1548). On arrival, Durham found Cobb, who had been there for 15 to 20 minutes (J.A. 87; Tr. 965-966, 929-930). Durham had no more than lit a cigarette when Supervisor Cheek appeared (J.A. 87; Tr. 928, 929, 966, 1560). Cheek asked Durham where he had been, and Durham replied that he had gone directly from the weave room to the washroom and had only just arrived (J.A. 87; Tr. 930, 958, 1538). Cobb and Durham told Cheek that Cobb had been there longer (J.A. 87; Tr. 1538, 1561). Cheek replied that Cobb's cloth was on the floor, and ordered him to get back to it (J.A. 87; Tr. 1561). However, he gave no similar instruction to Durham; instead, according to Cheek's own testimony, he left Durham in the

washroom to finish the cigarette Durham had just lit (J.A. 87-88; Tr. 1562). When Durham returned to his job, his work was still caught up; thus, until he was again needed on his own looms, he helped Cobb doff (J.A. 88; Tr. 903, 967-968).

During Durham's next shift, on the morning of September 11, Cheek showed him a personnel action report dated the preceeding day. It recommended that Durham be discharged for "staying in water house too long" (J.A. 13, n. 2; Tr. 932-933, 936, G.C.X. 7). This was the first write-up that Cheek had ever given Durham (Tr. 1545).[7] The following night, when Durham reported to work, Cheek discharged him, giving as the reason "leaving the job unattended too long" (J.A. 88; Tr. 933-933a). Cobb, who had been in the washroom longer than Durham and whose work was in need of attention, but was not a union adherent, was not given a write-up (J.A. 88, 92; Tr. 1563). Rather, Cheek told Cobb that he was "not going to press charges" and that Cobb should not "stay in the water house * * * over fifteen minutes" (J.A. 88; Tr. 968-969).

c. The Slater plant. On August 31, 1964, the Union distributed leaflets at the Slater plant gate discussing the economic benefits it hoped to bring, stating that managerial interrogation was unlawful and any such action should be brought to the attention of the leaflet signers who would then file charges with

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[7] Durham's only previous write-up was from another supervisor, shortly after Durham's name first appeared on a union leaflet (J.A. 84; Tr. 923-924, 936, 1507). It was for a completely unrelated matter, incorrect doffing of a roll of cloth (J.A. 84-85; G.C.X. 6).

the Board (J.A. 115; G.C.X. 21). The leaflet bore the names of 19 persons, 10 of whom, the Board found in *Stevens I*, had previously been unlawfully dismissed from their employment (J.A. 115-116; G.C.X. 21, 157 NLRB at 924-934, 875-876). Within little over a month of the leaflet's circulation, four more signers were fired, Hill, Wojeck, Reeves, and Willis Young. The facts with respect to Hill are as follows:

James Hill worked in the finishing department on the second shift (J.A. 120; Tr. 2207-2208). He joined the Union early in its activities at Slater, and took part in the organizing campaign during September 1963 (J.A. 120; Tr. 2208). About the middle of October of that year, while Hill was working a double shift, he came upon Overseer Trotter and employee Eskew "sitting on a table" (J.A. 39, 120; Tr. 2208-2210). Eskew said to Hill, "you're a union man, aren't you?" (J.A. 38, 120-121; Tr. 2210). When Hill replied that he was, Eskew asserted, "you know you'll get fired for that" (J.A. 38; 121; Tr. 2210). Hill, looking at Overseer Trotter, queried, "you're not going to fire a good man for just joining the Union, are you?" (J.A. 121; Tr. 2210). Trotter "hung his head down and kind of smiled," and said, "No" (*ibid.*). After this conversation, the Company deprived Hill of overtime given to his fellow employees, and also other overtime work that he had previously received (J.A. 38-40).

As noted *supra*, on August 31, 1964, Hill participated in the plant gate distribution of the union leaflet which bore his name as a member of the organizing committee (J.A. 121; Tr. 2222). There-

after, he was watched more closely by his immediate supervisor, Elrod, and his general overseer, Brinkley, both while working and during break periods (J.A. 121; Tr. 2222-2223). On September 2, Elrod entered the smoking area, and saw Hill sitting beside another employee (J.A. 121; Tr. 2713-2714). Saying nothing to the other employee, Elrod told Hill that only one person was supposed to be in the area at a time (J.A. 121; Tr. 2713). Hill got up and went back to his job (*ibid.*). A day or so later, Elrod came upon Hill in the same place talking with an anti-union employee, Cook (J.A. 121; Tr. 2712, 2173). When Elrod appeared, Hill left (*ibid.*). According to Elrod, Cook "a little later" told him that, if Hill "didn't quit bothering him * * * about the Union," he, Cook, "was going to drive him under that machine" (J.A. 121; Tr. 2713). Elrod immediately went to his superior, Brinkley, who said he would "take care of it" (J.A. 121; Tr. 2713-2714). On September 4, after talking with Cook and two other employees, Brinkley gave Hill a write-up for "bothering [employees] on the job and interfering with their work" (J.A. 122; Tr. 2635-2636, 2193, 2199-2200, 2193-2195, 2686-2687, 2200-2202, 2225). The write-up also notified Hill that "any further complaints of this nature [and] you will be subject to discharge" (*ibid.*). Hill denied that he had bothered anyone on the job and asked who had complained, but Brinkley refused to tell him (J.A. 123; Tr. 2225-2226, 2680-2681). Brinkley asked Hill, "why don't you quit," to which Hill answered that he would "continue to pass out leaflets and try to help organize the union" (J.A. 123; Tr. 2226-2227).

When Hill's write-up became known in the plant, a hazing campaign against him began (J.A. 123). The tormentors were Cook, Hart, and McKinney, who worked on the machine next to Hill's and who were known to be hostile to the Union (J.A. 123; Tr. 2223-2224, 2691). The three men talked at and about Hill as he worked, saying he was going to be fired, laughed about his foolishness in sticking his neck out, called out to Hill and to others about the write-up, and whistled at Hill (J.A. 123; Tr. 2224, 2230-2231). McKinney followed Hill about in the dye house, asking if it was his name on the Union leaflet and posing questions about the Union (J.A. 123; Tr. 2230). When Hill spoke to the other men on his machine in connection with his job, Hart would call out that they should not talk to Hill, because he had gotten a write-up and was not supposed to talk to any one (J.A. 13, n. 2, 123; Tr. 2224, 2230-2231). After a few days of this, Hill asked Brinkley if he could stop the three men (J.A. 123; Tr. 2231-2232). Hill referred to his write-up and pointed out that he was "trying to abide by the company rules" (J.A. 123; Tr. 2232). Brinkley said he would "check into it," but said nothing more on the matter to Hill until the day of his discharge (J.A. 123-124; Tr. 2233, 2235). A day or so after Hill's complaint to Brinkley, a cup with a card attached was hung between his work place and that of Cook, Hart and McKinney (J.A. 124; Tr. 2233). The card read, "Money for James Hill to hunt a new job with" (*ibid.*). Later, in his office, Brinkley showed the cup and card to Hill, and asked if he knew anything about it (J.A. 124; Tr. 2234). When

Hill said that he did not, Brinkley said nothing more (*ibid.*).

On September 14, while Hill was working, employee Bell, whose name also had been on the August 31 leaflet, exclaimed to him, "James, I can't go on like this, I'm going to get my name off that leaflet [and] I'm not going to stick my neck out any more * * *" (J.A. 124-125; Tr. 2235-2236). Hill interrupted, saying that he could not talk to Bell because he had been given a write-up—"I wasn't supposed to be talking; the only way I could get out of it was to talk" (J.A. 125; Tr. 2236). As Bell left, Hill saw Supervisor Elrod standing some 15-20 feet away "looking straight at me" (Tr. 2236). Seeking to protect himself, Hill went over to Elrod and explained, "I just told the boy I couldn't talk to him" (J.A. 125; Tr. 2236-2237). Elrod suggested that Hill tell this to Brinkley, which Hill immediately did (J.A. 125; Tr. 2237, 2715). Brinkley's response was to fire Hill on the spot. Brinkley said that he was "fed up"; it looked to him as if Hill could not "get along with the boys" (J.A. 125; Tr. 2237).[8]

B. The Decisions of the Board and the Court of Appeals

On these and similar facts and the other evidence in the record, the Board found that the Company violated Section 8(a)(3), (4), and (1) of the Act by discharging 18 employees, including those discussed above, because of their union activities, and/or be-

[8] At the same time, Brinkley told Hill that he had discovered Hill's complaints about harassments by Cook, Hart, and McKinney "to be completely unfounded" (J.A. 123-124; Tr. 2235).

cause they had testified adversely to the Company in *Stevens I* (Pet. App. 36a, 44a-50a, n. 11, 55a-63a, 65a). The Board also found that the Company violated Section 8(a)(3) and (1) by discriminating against two employees in the assignment of overtime work (Pet. App. 36a, 63a-65a). In addition, the Board found that the Company committed independent violations of Section 8(a)(1) by threatening reprisals, promising benefits, coercively interrogating employees, creating the impression of surveillance, requiring an employee to remove union insignia, attempting to induce an employee to resign from the Union, and discriminatorily applying a no-solicitation rule (Pet. App. 36a-39a).[9]

The Board ordered the Company to cease and desist from these unfair labor practices, to reinstate with back pay the employees discriminated against, and to post appropriate notices (Pet. App. 76a-79a). The Board, however, concluded that (Pet. App. 67a-69a):

> The record before us of extensive unfair labor practices and the history of illegal conduct by the [Company] persuade us that conventional remedies would not be adequate to disabuse the employees of the effects of the [Company's] flagrant conduct and to bring home to the [Company's] employees the message that the [Company] is being required to cease and desist from

[9] The Board found that a preponderance of the evidence did not establish that the Company had violated the Act by its discharge of six other employees, and dismissed the complaint as to these employees (Pet. App. 39a-44a, 50a-55a, 75a). The Union sought review of the Board's action with respect to five of these employees, and the court of appeals sustained the Board's findings as to them (Pet. App. 5a-6a, 10a-13a).

interfering with their rights guaranteed by Section 7 of the Act * * *.

Accordingly, the Board further ordered the Company to mail a copy of the Board's remedial notice to all of its employees at all 43 of the Company's plants in North and South Carolina; to post copies of the notice on the bulletin boards of all of these plants; to read the notice to all of the employees at these plants; to grant the Union, upon its request, reasonable access to the Company's bulletin boards at these plants for a period of one year; and to provide the Union, upon its request made within one year, a list of the names and addresses of all employees in its North and South Carolina plants (Pet. App. 79a-80a).

The court of appeals held that substantial evidence supported all of the Board's unfair labor practice findings (Pet. App. 6a). As to the Board's order, the court of appeals found appropriate the provisions which required the Company to cease and desist from the unfair labor practices found, to reinstate with back pay the discriminatees, to post the notices in all of its 43 plants, to mail a copy of the notice to each of its employees at these 43 plants, and to grant the Union, upon its request, reasonable access to the Company's bulletin boards at these plants for a period of one year (Pet. App. 16a, 20-21a).[10] The court, how-

[10] The court of appeals declined to enforce the portion of the Board's order requiring the Company to provide the Union, upon its request made within one year, a list of the names and addresses of all employees in its North and South Carolina plants (Pet. App. 21a-23a). The Board has not cross-petitioned to seek review of this modification of its order.

ever, as in *Stevens I*, granted enforcement of the reading requirement only at the eight plants where the unfair labor practices occurred and required the Board to afford the Company the option of having the notice read by a Board representative, rather than by its own officials (Pet. App. 16a-20a).[11]

ARGUMENT

1. Petitioner's contention (Pet. 31-97) that the court of appeals erred in affirming the Board's findings that the discharges of the 18 employees and the denial of overtime work to the two employees were discriminatorily motivated raises only an evidentiary issue which does not warrant further review. *Universal Camera Corp.* v. *National Labor Relations Board*, 340 U.S. 474, 491; *National Labor Relations Board* v. *Pittsburgh Steamship Co.*, 340 U.S. 498, 502-503. In any event, the evidence summarized above, and that set forth in the detailed decisions of the Trial Examiner and the Board, demonstrate that there was ample basis for the Board's findings. After noting that "the evidence of anti-union action is overwhelming in some instances, and nearer the borderline in others" (Pet. App. 6a), the court below concluded, after reviewing "the Board's findings and the record with respect to each of the discharges," that there was substantial evidence to support each finding (*ibid.*). There is no occasion for this Court to

[11] In its brief to the court below, the Board stated that it acquiesced in the limitations on the reading requirement imposed by the court in *Stevens I* (see Pet. App. 17a).

make a further canvass of the lengthy record in this case.[12]

2. Contrary to petitioner's assertions (Pet. 7-31), the remedies enforced by the court of appeals, which are tailored to the special facts of this far-from-ordinary case, are well within the broad power conferred on the Board by Section 10(c) of the Act.[13]

a. The requirements that the Company post copies of the Board's remedial notice in all of its 43 North and South Carolina plants and mail a copy of the notice to all of its employees in these plants were plainly appropriate in this case. As the court below stated in *Stevens I* (380 F. 2d at 304), in approving a similar requirement:

> Flagrant violations occurred at each of the twenty plants involved in this proceeding where organization campaigns were instituted. The area is geographically limited and contiguous; the evidence shows that the Company's policies were not determined at individual plant levels alone. That

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[12] Although employee Suratt did not testify at the Board hearing in this case (see Pet. 31), the circumstances of his discharge were so clearly established by the other testimony in the record (see the record references, *supra*, pp. 5-7) that the Board could properly make an unfair labor practice finding with respect to Suratt. And, respecting employee Willard Page (see Pet. 32), the Board found that his misconduct, when balanced against the Company's numerous and flagrant unfair labor practices, was not sufficiently serious to disqualify him for reinstatement (Pet. App. 59a, n. 13).

[13] Section 10(c) authorizes the Board, upon finding an unfair labor practice, to require the employer "to take such affirmative action * * * as will effectuate the policies of this Act."

> being so, including the other twenty-three Carolina plants in the order was justified "since there is every reason to anticipate that if not deterred, [the Company] would pursue the same discriminatory policies" throughout the region.

Concerning the mailing requirement, the court added (*ibid.*):

> At the outset of the Union campaign, the Company posted its own Notice * * * on the bulletin boards in the plants involved in this case. But the Company obviously thought that mere posting would not be sufficient to drive home its point, because in addition it mailed a copy to each employee in the plants. The Board's notice is entitled to the same circulation for the same reasons.

b. In view of the flagrant and pervasive unfair labor practices that the Company engaged in, it was also permissible for the Board to conclude that, in order to eradicate the lingering coercive impact of those illegal acts, it was necessary for the employees to receive oral assurances at their job sites that the Company would respect their organizational rights. Despite petitioner's repeated characterization (Pet. 13; see Pet. App. 17a, n. 8), the requirement that the Board's notice be read to the employees in the plants is not tantamount to a "confession of guilt." The notice to be read (Pet. App. 81a-84a) speaks prospectively, and merely advises the employees that the Company will not engage in certain specified conduct that it is legally enjoined from engaging in. Admittedly, it does not recite the cease and desist provisions of the Board's order, nor does it assert that the Company

has engaged in unlawful conduct in the past. Moreover, the court below, as it did in *Stevens I*, modified the reading requirement so as to afford the Company the option of having the notice read by a Board representative instead of by its own officials.[14] As it explained in *Stevens I* (380 F. 2d at 305), "This alternative eliminates the necessity of participation by the Company, if it so desires, and still guarantees effective communication of the Board's order to the Company's employees."

Nor is review of the reading requirement in this case warranted because the Courts of Appeals for the Fifth and District of Columbia Circuits have declined to enforce similar reading requirements. See *National Labor Relations Board* v. *Laney & Duke Storage Co.*, 369 F. 2d 859, 869 (C.A. 5); *International Union of Electrical Workers* v. *National Labor Relations Board (Scott's Inc.)*, 383 F. 2d 230, 234 (C.A. D.C., Wright J., dissenting), certiorari denied, 390 U.S. 904. Those decisions, like the instant case, turned on the particular circumstances involved. The unfair labor practices in *Laney & Duke* were not as extensive and aggravated as those here. While the situation was somewhat more severe in *Scott's*, the court, while declining to sanction a reading requirement there, acknowledged "that some conduct on the part of an employer or a union might reach such extreme dimensions as justify the novel and drastic step of requiring the offending party to stand up be-

[14] Similarly, as in *Stevens I*, the court limited the reading requirement to only those plants where the unfair labor practices occurred (Pet. App. 17a).

fore the employees and read the Board's notice publicly" (383 F. 2d at 233-234). The instant case is such a situation, and thus the cases are not in fact inconsistent.

c. Finally, on the facts of the present case, the Board properly included the additional requirement that the Company grant the Union, upon its request, reasonable access to the Company's bulletin boards in its 43 North and South Carolina plants for a one-year period. While the Second Circuit declined to enforce a similar provision in *Stevens I* (380 F. 2d at 305), it found that here the Board had made an adequate showing that access to the Company's bulletin boards was "necessary in order to offset the Company's use of the boards in its campaign of coercion and in the posting of lists of employees who had joined the Union, the names of those employees who withdrew being 'scratched' from the lists" (Pet. App. 20a).[15] As the court concluded (*ibid.*):

> [I]n view of the Company's use of the boards in combatting the Union, giving the Union reasonable access to them will effectuate the purposes of the Act, in that it will help to restore to the employees the opportunity to hear all viewpoints.[16]

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[15] See *National Labor Relations Board* v. *H.W. Elson Bottling Co.*, 379 F. 2d 223, 226 (C.A. 6), where, in circumstances less aggravated than the unfair labor practices here, a similar requirement was enforced.

[16] Petitioner's concern about the absence of limitations on the quantity or nature of the materials which the Union might place on the Company's bulletin boards, and the lack of any definition of the frequency of Union access thereto in the Board's order (Pet. 8-12), seems contrived. In this regard,

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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petitioner makes the identical arguments which were made to and rejected by the court of appeals (compare Pet. 11-12 with Pet. App. 21a). As the court below stated (Pet. App. 21a): "The Board's order limits the Union to 'reasonable' access to the bulletin boards. We trust that the Union will bear that in mind, and that the Company does not intend to litigate the reasonableness of every piece of material posted by the Union."

APPENDIX

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151 *et seq.*) are as follows:

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).

Sec. 8.(a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

* * * *

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization:

* * * *

(4) to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act;

* * * *

Sec. 10.(c) * * * If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice,

then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act: * * *

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